

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ERIC GRIFFIN,

Plaintiff,

vs.

LAWRENCE LEAVITT, *et. al.*,

Defendant.

Case No. 2:09-cv-00845-PMP-GWF

**ORDER AND FINDINGS AND  
RECOMMENDATIONS**

Application to Proceed *In Forma  
Pauperis* (Dkt. #1) and Motions  
(Dkt. #s 2-5)

This matter is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis* and Complaint Pursuant to 42 U.S.C. § 1983 (Dkt. #1), filed on May 12, 2009; Motion for Permanent Injunction (Dkt. #2), filed on May 14, 2009; Motion to Amend Motion for Permanent Injunction (Dkt. #3), filed May 15, 2009; Motion for Arrest of U.S. Agent (Dkt. #4), filed May 22, 2009; and Motion to Amend/Correct Complaint (Dkt. #5), filed May 26, 2009.

The Court finds that Plaintiff is unable to prepay the filing fee. However, the Court also recommends that the Complaint be dismissed with prejudice as delusional and frivolous.

**I. *In Forma Pauperis* Application**

Plaintiff Eric Griffin filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee and Plaintiff's request to proceed *in forma pauperis* will be granted.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to

1 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief  
2 may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is immune from  
3 such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be dismissed for failure to  
4 state a claim upon which relief may be granted “if it appears beyond a doubt that the plaintiff can prove  
5 no set of facts in support of his claims that would entitle him to relief.” *Buckey v. Los Angeles*, 968 F.2d  
6 791, 794 (9th Cir. 1992); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A complaint may be  
7 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario.  
8 *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual frivolousness is  
9 appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or  
10 not there are judicially noticeable facts available to contradict them.” *Denton*, 504 U.S. at 33. When a  
11 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint  
12 with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
13 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.  
14 1995).

15 In his Complaint, Griffin alleges that Judge Lawrence Leavitt violated his due process rights by  
16 recommending that Plaintiff’s Complaint in Case No. 2:09-cv-00458-RCJ-LRL be dismissed with  
17 prejudice. Judge Leavitt’s recommendation in Case No. 2:09-cv-00458-RCJ-LRL was affirmed on May  
18 19, 2009 by the Court and Plaintiff’s Complaint was dismissed with prejudice as Plaintiff’s claims were  
19 found to be frivolous. Plaintiff’s prior complaint alleged that the City of Henderson and Clark Co.  
20 District Attorney have withheld information from human rights groups about the illegal use of  
21 D.E.W./Voice-to-Skull technology and the use of this technology to torture the plaintiff. (Dkt. #1-2 at 1-  
22 3). Plaintiff argues that the Court should have heard his motion to have a special prosecutor appointed  
23 and motion for permanent injunction within 24 to 48 hours as all of his motions constituted “life or death  
24 motions”. (Dkt. #1-2 at 2). In addition, Plaintiff alleges that by recommending the dismissal of  
25 Plaintiff’s case in Case No. 2:09-cv-00458-RCJ-LRL, Judge Leavitt covered up murders and denied Mr.  
26 Griffin the right to be a free person and free from torture. (*Id.*) The Court finds that these statements are  
27 fantastic, delusional and irrational and will therefore recommend that the Complaint be dismissed with  
28 prejudice as it is clear from the face of the complaint that the deficiencies cannot be cured by

1 amendment.

2 In light of the Court's recommendation, Plaintiff's Motion for Permanent Injunction (Dkt. #2),  
3 Motion to Amend Motion for Permanent Injunction (Dkt. #3), Motion for Arrest of U.S. Agent (Dkt. #4)  
4 and Motion to Amend/Correct Complaint (Dkt. #5) will be denied as moot, pending the District Judge's  
5 granting of the Court's recommendation of dismissal.

6 Accordingly, and for good cause shown,

7 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis* (Dkt. #1)  
8 is **GRANTED**. Plaintiff shall not be required to pre-pay the full filing fee of three hundred fifty dollars  
9 (\$350.00).

10 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to conclusion  
11 without the necessity of prepayment of any additional fees or costs or the giving of security therefor.  
12 This Order granting leave to proceed *in forma pauperis* shall not extend to the issuance of subpoenas at  
13 government expense.

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint.

15 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Permanent Injunction (Dkt. #2),  
16 Motion to Amend Motion for Permanent Injunction (Dkt. #3), Motion for Arrest of U.S. Agent (Dkt. #4)  
17 and Motion to Amend/Correct Complaint (Dkt. #5) will be **DENIED** as moot, pending the District  
18 Judge's granting of the Court's recommendation of dismissal.

#### 19 **RECOMMENDATION**


20 **IT IS HEREBY RECOMMENDED** that Plaintiff's Civil Rights Complaint Pursuant to 42  
21 U.S.C. § 1983 (Dkt. #1) should be **DISMISSED with prejudice** as delusional and frivolous and as it is  
22 clear from the face of the complaint that the deficiencies cannot be cured by amendment.

#### 23 **NOTICE**

24 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in  
25 writing and filed with the Clerk of the Court within ten (10) days. The Supreme Court has held that the  
26 courts of appeal may determine that an appeal has been waived due to the failure to file objections within  
27 the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to  
28 file objections within the specified time and (2) failure to properly address and brief the objectionable

1 issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of  
2 the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United*  
3 *Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

4 DATED this 2nd day of June, 2008.

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7 **GEORGE FOLEY, JR.**  
8 **UNITED STATES MAGISTRATE JUDGE**  
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